1822.

SUPREME COURT OF THE UNITED STATES.

No. 150.

JANE M. CARROLL PLAINTIFF IN ERROR,

vs.

LESSEE OF GEORGE W. CARROLL AND OTHERS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF MARYLAND.

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(GIDEON, Print.)

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-two.

Present, the honorable R. B. Taney, chief justice of the Supreme Court of the United States; John Glenn, judge of Maryland district; Z. Collins Lee, esquire, attorney; Thomas H. Kent, (of Jos.,) esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

Nar. against the casual ejector.

LESSEE OF GEORGE W. CARROLL, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife,
vs.
JANE M. CARROLL.

Be it remembered, that heretofore, to wit, on the ninth day of February, in the year of our Lord one thousand eight hundred and fifty-two, the lessee of George W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, by R. Johnson, his attorney, declared in the circuit court here against John Doe, in a plea of trespass in ejectment, with notice thereto annexed, in form following, to wit:

Circuit court of the United States, for the fourth circuit, in and for the district of Maryland.

MARYLAND DISTRICT, *to wit:*

John Doe, a citizen of the State of Maryland, was attached to answer unto Richard Roe of a plea, wherefore he, the said John, with force and arms, &c., at the district aforesaid, entered into three undivided fourth parts of all of three several tracts or parcels of plantable land, called, for the first of said three tracts, "Black Walnut Thicket" and "Content," contiguous to each other, lying and being in Prince George's county, in the State of Maryland, containing seven hundred acres, more or less; and called, for the second of said three tracts, "Addition to Brookfield," situate, lying, and being in Prince George's county aforesaid, containing one hundred and fifty acres, more or less; and called, for the third of said three tracts, "Lot No. 1," being part

of a tract of land called Brookfield, containing four hundred and fifty acres, more or less; each and all of said three tracts being in the district aforesaid, with the appurtenances, which George W. Carroll, De Rosz Carroll, citizens of the State of Alabama, and Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, citizens of the State of Texas, to the said Richard demised for a term of years, which is not yet expired, and him, the said Richard, from his said farms ejected.

And also, wherefore, with force and arms, &c., at the district aforesaid, he entered into one undivided fourth part of all the tracts or parcels of land, with the appurtenances, in the first count above particularly named and described, which George W. Carroll aforesaid, a citizen of the State of Alabama, to the said Richard demised for a term of years, which is not yet expired, and him, the said Richard, from his farms aforesaid ejected.

And also, wherefore, with force of arms, &c., at the district aforesaid, he entered into one other undivided fourth part of all the tracts or parcels of land, with the appurtenances, in the first count above particularly named and described, which De Rosz Carroll aforesaid, a citizen of the State of Alabama, to the said Richard demised for a term of years, which is not yet expired, and him, the said Richard, from his farms aforesaid ejected.

And also, wherefore, with force and arms, &c., at the district aforesaid, he entered into one other undivided fourth part of all the tracts or parcels of land, with the appurtenances, in the first count above particularly named and described, which Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, all as aforesaid citizens of the State of Texas, to the said Richard demised for a term of years, *whis* not yet expired, and him, the said Richard, from his farms aforesaid ejected. And other harms to him, the said Richard, then and there did, to the great damage of him, the said Richard, and against the peace, government, and dignity of the United States.

And whereupon the said Richard, by Reverdy Johnson, his attorney, complains that the said George W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, on the first day of January, in the year eighteen hundred and fifty-two, at the district aforesaid, had demised unto the said Richard the three undivided fourth parts of all the tracts or parcels of land, with the appurtenances, in the first count above particularly mentioned and described, to have and to hold the said premises, with the appurtenances, to him, the said Richard, and his assigns, from thenceforth for, and during, and unto the full end and term of, fifteen years from thence next ensuing, and fully to be complete and ended. And also that the said George W. Carroll, on the said first day of January, in the year eighteen hundred and fifty-two, at the district aforesaid, had demised unto the said Richard one undivided fourth part of all the tracts or parcels of land, with the appurte-

nances, in the first count above particularly mentioned and described; to have and to hold the said premises, with the appurtenances, to him, the said Richard, and his assigns, from thenceforth for, and during, and unto the full end and term of fifteen years from thence next ensuing, fully to be complete and ended.

And also that the said De Rosz Carroll, on the said first day of January, in the year eighteen hundred and fifty-two, at the district aforesaid, had demised unto the said Richard one other undivided fourth part of all the tracts or parcels of land, with the appurtenances, in the first count above particularly mentioned and described; to have and to hold the said premises, with the appurtenances, to him, the said Richard, and his assigns, from thenceforth, for and during and unto the full end and term of fifteen years, from thence next ensuing, fully to be complete and ended.

And also that the said Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, on the said first day of January, eighteen hundred and fifty-two, at the district aforesaid, had demised unto the said Richard one other undivided fourth part of all the tracts or parcels of land, with the appurtenances, in the first count above particularly mentioned and described; to have and to hold the said premises, with the appurtenances, to him, the said Richard, and his assigns, from thenceforth, for and during and unto the full end and term of fifteen years, from thence next ensuing, fully to be complete and ended.

By virtue of which said several demises the said Richard entered into all and singular the premises aforesaid, with the appurtenances thereunto belonging, and was thereof possessed; and the said Richard being thereof possessed, the said John Doe, afterwards, to wit, on the day and year aforesaid, with force and arms, &c., entered into the said several premises, with the appurtenances, which the said George W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, demised to the said Richard in manner aforesaid, and him, the said Richard, from the premises aforesaid ejected, and other outrages to him, the said Richard, then and there did, to the great damage of him, the said Richard, and against the peace, government, and dignity of the United States, &c.; wherefore the said Richard saith he is prejudiced, and hath sustained damage to the value of one thousand dollars, and therefore he brings suit, &c.

REVERDY JOHNSON,
Att'y for plaintiffs.

Notice.

Mrs. JANE M. CARROLL,
Nottingham, Prince George's county, Md.

I am informed that you are in possession of, or claim title to, the premises in this declaration mentioned, or to some part thereof; and I

being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear on the first Monday in April next in the circuit court of the United States, for the Maryland district, by some attorney of that court, and then and there, by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Dated this ninth day of February, in the year of our Lord eighteen hundred and fifty-two.

Your loving friend,

JOHN DOE.

Copies of which said declaration and notice were made and sent to the marshal for the Maryland district aforesaid, thereon endorsed, "copy to be served on the tenant in possession, or to be set up on the premises if no tenant, &c." At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two, and being the day of the return of the service of the aforegoing declaration in ejectment, comes into the circuit court here the said Richard Roe, lessee of the said Geo. W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife; and the marshal of the Maryland district aforesaid, to wit, Thomas H. Kent, (of Jos.,) gentleman, to whom copies of the said declaration and notice in ejectment aforesaid were in form aforesaid made and sent, certifies the service thereof to the court here, in form following, to wit:

Marshal's return.

In the circuit court of the United States, in and for the Maryland district.

RICHARD ROE, lessee of George W. Carroll and others,
vs.
JANE M. CARROLL.

I certify, to the honorable the circuit court of the United States, for the fourth circuit, in and for the Maryland district, that I did, on the twenty-fourth day of February, in the year one thousand eight hundred and fifty-two, serve on Jane M. Carroll, tenant in possession mentioned in the declaration, with a true copy of the said declaration and notice thereunder written. So answers

THO. H. KENT, (of Jos.,)
U. S. marshal.

Whereupon the said lessee of the said George W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, by his attorney, prays that the said Jane M. Carroll to his declaration aforesaid may

appear and answer, or in default thereof judgment be rendered against the said John Doe, the casual ejector.

Whereupon the said Jane M. Carroll, by Thomas S. Alexander and John V. L. McMahon, her attorneys, appears in the circuit court here as landlady of the premises, to be made defendant in the place of the said John Doe, the casual ejector. Whereupon it is ruled by the court here, with the consent of the said Richard Roe, lessee of the said Geo. W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, by his attorney aforesaid, and the said Jane M. Carroll, who claims the title in question, by her attorneys aforesaid, that the said Jane M. Carroll be admitted defendant in the place of the said John Doe, the casual ejector, and that she immediately receive a declaration and plead thereto the general issue; and at the trial to be had the said Jane M. Carroll should appear in her proper person, or by her attorney or counsel, and confess lease, entry, and ouster, and expulsion of so much of the premises in the said declaration of the said lessee of the said George W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, as aforesaid, as is in the possession of the said Jane M. Carroll, or any other person claiming by or under her title, or in default thereof judgment be entered against the defendant, John Doe, the casual ejector; but that prosecution be stayed against him until he should make default in any of the premises.

And it was further ruled by the court here, with the consent of counsel, that if by reason of such default the said Richard Roe, lessee as aforesaid, should become non-suit at the trial, the said Jane M. Carroll should take no advantage thereof, but should pay the said Richard Roe, lessee as aforesaid, his costs, &c.

And it was further ruled by the court here, that if, upon the trial of the issue, a verdict should be given for the said Jane M. Carroll, or the said Richard Roe, lessee as aforesaid, should prosecute his declaration for any other cause than for the not confessing lease, entry, and ouster, as aforesaid, the said George W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, lessors of the said Richard Roe, should pay the costs, &c.

And thereupon the said Richard Roe, lessee as aforesaid, declares against the said Jane M. Carroll, in the plea aforesaid, in manner and form following, to wit:

Nar. against Jane M. Carroll.

Circuit court of the United States, for the fourth circuit, in and for the district of Maryland.

MARYLAND DISTRICT, *to wit:*

Jane M. Carroll, a citizen of the State of Maryland, was attached to answer unto Richard Roe of a plea, wherefore she, the said Jane M.

Carroll, with force and arms, &c., at the district aforesaid, entered into three undivided fourth parts of all of three several tracts or parcels of plantable land, called, for the first of said three tracts, "Black Walnut Thicket," and "Content," contiguous to each other, lying and being in Prince George's county, in the State of Maryland; containing seven hundred acres, more or less; and called, for the second of said three tracts, "Addition to Brookfield," situate, lying, and being in Prince George's county, aforesaid, containing one hundred and fifty acres, more or less; and called for the third of said three tracts, "Lot No. 1, being part of a tract of land called Brookfield," containing four hundred and fifty acres, more or less; each and all of said three tracts being in the district aforesaid, with the appurtenances, which George W. Carroll, De Rosz Carroll, citizens of the State of Alabama, and Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford, and Mary, his wife, citizens of the State of Texas, to the said Richard demised for a term of years which is not yet expired, and him, the said Richard, from his said farms ejected.

And also, wherefore, with force and arms, &c., at the district aforesaid, she entered into one undivided fourth part of all the tracts or parcels of land, with the appurtenances, in the first count above particularly named and described, which George W. Carroll aforesaid, a citizen of the State of Alabama, to the said Richard demised, for a term of years which is not yet expired, and him, the said Richard, from his farms aforesaid ejected.

And also, wherefore, with force and arms, &c., at the district aforesaid, she entered into one other undivided fourth part of all the tracts or parcels of land, with the appurtenances, in the first count above particularly named and described, which De Rosz Carroll aforesaid, a citizen of the State of Alabama, to the said Richard demised for a term of years which is not yet expired, and him, the said Richard, from his farms aforesaid ejected.

And also, wherefore, with force and arms, &c., at the district aforesaid, she entered into one other undivided fourth part of all the tracts or parcels of land, with the appurtenances, in the first count above particularly named and described, which Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, all as aforesaid citizens of the State of Texas, to the said Richard demised for a term of years which is not yet expired, and him, the said Richard, from his farms aforesaid ejected. And other harms to him, the said Richard, then and there did, to the great damage of him, the said Richard, and against the peace, government, and dignity of the United States.

And whereupon the said Richard, by Reverdy Johnson, his attorney, complains, that the said George W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, on the first day of January, in the year eighteen hundred and fifty-two, at the district aforesaid, had demised unto the said Richard the three undivided fourth parts of

all the tracts or parcels of land, with the appurtenances, in the first count above particularly mentioned and described; to have and to hold the said premises, with the appurtenances, to him, the said Richard, and his assigns, from thenceforth, for and during and unto the full end and term of fifteen years, from thence next ensuing, and fully to be complete and ended; and also that the said George W. Carroll, on the said first day of January, in the year eighteen hundred and fifty-two, at the district aforesaid, had demised unto him, the said Richard, one undivided fourth part of all the tracts or parcels of land, with the appurtenances, in the first count above particularly mentioned and described; to have and to hold the said premises, with the appurtenances, to him, the said Richard, and his assigns, from thenceforth, for and during and unto the full end and term of fifteen years from thence next ensuing, fully to be complete and ended; and also that the said De Rosz Carroll, on the said first day of January, in the year eighteen hundred and fifty-two, at the district aforesaid, had demised unto the said Richard one other undivided fourth part of all the tracts or parcels of land, with the appurtenances, in the first count above particularly mentioned and described; to have and to hold the said premises, with the appurtenances, to him, the said Richard, and his assigns, from thence henceforth, for and during and unto the full end and term of fifteen years from thence next ensuing, fully to be complete and ended. And also that the said Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, on the said first day of January, in the year eighteen hundred and fifty-two, at the district aforesaid, had demised unto the said Richard one other undivided fourth part of all the tracts or parcels of land, with the appurtenances, in the first count above particularly mentioned and described; to have and to hold the said premises, with the appurtenances, to him, the said Richard, and his assigns, from thenceforth, for and during and unto the full end and term of fifteen years from thence next ensuing, and fully to be complete and ended. By which said several demises the said Richard entered into all and singular the premises aforesaid, with the appurtenances thereunto belonging, and was thereof possessed, and the said Richard being thereof possessed, the said Jane M. Carroll afterwards, to wit, on the day and year aforesaid, with force and arms, &c., entered into the said several premises, with the appurtenances, which the said George W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, demised to the said Richard in manner aforesaid, and him, the said Richard, from the premises aforesaid ejected, and other outrages to him, the said Richard, then and there did, to the great damage of him, the said Richard, and against the peace, government, and dignity of the United States, &c.; wherefore the said Richard saith he is prejudiced, and hath sustained damage to the value of one thousand dollars, and therefore he brings his suit, &c.

REVERDY JOHNSON,
Attorney for plaintiffs.

Whereupon the said Richard Roe, lessee as aforesaid, by his attorney aforesaid, prays that the said Jane M. Carroll to his declaration aforesaid may answer.

Thereupon, on motion of the said Jane M. Carroll, by her attorneys aforesaid, leave is given by the court here to the said Jane M. Carroll to ascertain her defence, and to answer to the declaration aforesaid of the said Richard Roe, lessee as aforesaid, in the plea aforesaid, until the first Monday in November next; the same day is given to the said Richard Roe, &c.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-two, till which said day the said Jane M. Carroll had leave to ascertain her defence, and then to answer the declaration aforesaid of the said Richard Roe, lessee as aforesaid, in the plea aforesaid, comes again into the circuit court here, as well the said Richard Roe, lessee as aforesaid, by Reverdy Johnson and John Nelson, his attorneys, as the said Jane M. Carroll, by her attorneys aforesaid.

Plea not guilty.

And the said Jane M. Carroll, by her attorneys aforesaid, defends the force and injury, when, &c., and says, that she is not guilty of the trespass and ejectment aforesaid, in the declaration aforesaid mentioned, in manner and form as the said Richard Roe, lessee as aforesaid, above complains against her, and of this she puts herself upon the country.

Issue.

And the said Richard Roe, lessee as aforesaid, by his attorneys aforesaid, in like manner, &c.

Whereupon, for trying the issue aforesaid, between the parties aforesaid, within joined, it is ordered by the court here that a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.

Jury.

Thereupon it is ordered by the court here, that twenty persons from the pannel of petit jurors returned to the court here by the marshal of Maryland district aforesaid be drawn by ballot; and thereupon the twenty person being so drawn by ballot and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called come, to wit, Thomas Snowden, Wm. P. Patterson, Theodore Denny, John C. Walch, David F. Hammit, Edward H. Dorsey, Henry A. Thompson, Pierson Adreon, Robert Barry, Lewis E. Pontier, Wm. B. Hammond, David A. McCrea.

Verdict.

Who being empannelled and sworn to say the truth in the premises, upon their oath do say, that the defendant is guilty of the trespass and ejectment in the declaration mentioned upon the tracts of land therein stated, called Black Walnut Thicket and Content in manner and form as the said lessee, John Doe, complains against her, and which is contained within the metes and bounds, courses and distances, set out and described in the paper hereto annexed, and made for that purpose a part of this verdict, being a deed from Walter B. Brook, of Prince George's county, and State of Maryland, Alexander Middleton and Elizabeth A. Middleton, his wife, of Charles county, and said State, to Michael B. Carrol, dated the 29th January, eighteen hundred and forty-two; and they assess the damages of said John Doe, lessee, by occasion of the trespass and ejectment aforesaid at one dollar; and as to the other trespasses and ejectment upon the other tracts or parcels of land in said declaration also mentioned, they find that the said defendant is not guilty.

(*Paper referred to and made part of the verdict.*)

This indenture, made this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and forty-two, between Walter B. Brooke, of Prince George's county, in the State of Maryland, and Alexander Middleton and Elizabeth A. Middleton, his wife, of Charles county, in the said State, of the one part, and Michael B. Carroll, of Prince George's county, and State aforesaid, of the other part, witnesseth: That for and in consideration of the sum of fifteen thousand dollars, current money, by the said Michael B. Carroll to the said Walter B. Brooke, and Alexander Middleton and Elizabeth A. Middleton, in hand paid, at and before the sealing and delivery of these presents, the receipt of which they doth hereby acknowledge, the said Walter B. Brooke, and Alexander Middleton and Elizabeth A. Middleton, his wife, hath bargained and sold, aliened and enfeoffed, and by these presents doth give, grant, bargain and sell, alien, enfeoff, release, convey and confirm, unto the said Michael B. Carroll, his heirs and assigns, all these tracts, parts of tracts or parcels of land, lying and being in Prince George's county aforesaid, called "Black Walnut Thicket" and "Content," contiguous to each other, and contained within the following metes and bounds, courses and distances, to wit: Beginning at a stone standing near a small branch, and also near two locusts, it being the fourth boundary of the aforesaid tract of land called "Black Walnut Thicket," and running down the said branch, dividing the lands of the said Carrolls and Joseph A. Turner by the following courses and distances, to wit: North six and one-quarter degrees east, five perches; north thirty-two degrees east, twelve and one-half perches; north fifty-one degrees east, nine and one-fifth perches; north thirty-one degrees east, eight and three-quarter perches; north

fifty-five and three-quarter degrees east, eight perches; north twenty-four degrees east, sixteen and two-fifth perches; north three and one quarter degrees east, fifteen perches; north thirty-two degrees west, seven and two-fifth perches; north four degrees west, six and one-third perches; north twenty-one and one-half degrees west, six perches; north forty-one degrees west, nineteen and three-quarter perches; north seventy-two and one-quarter degrees west, seven and two-fifth perches; north twenty-seven and one-half degrees east, eight and one-third perches; north eighteen and one-half degrees east, seven perches; north five degrees east, nine perches; north fifty-one degrees west, six and one-half perches; north two degrees east, twelve perches; north twenty-one degrees west, seven perches, to the main branch, then up with said branch, as follows: South forty-one and one-half degrees west, eight perches; south sixty-three and one-half degrees west, four perches; north fifty-eight degrees west, four perches; north twenty-one and one-half degrees west, seven perches; south eighty-three and one-quarter degrees west, five and one-quarter perches; south thirty-seven degrees west, eleven and three-quarter perches; north forty-six and one-half degrees west, five perches; south eighty-five degrees west, four and three-quarter perches; north fifty-one degrees west, seven and one-quarter perches; north thirty-five degrees west, four and three-fifth perches; south eighty-five degrees west, three perches; north twenty-eight degrees west, four and one-fifth perches; north thirty-two and one-quarter degrees west, five and one-eighth perches; north twelve degrees west, seven and one-third perches; south sixty-six degrees west, five and four-fifth perches; north eighty-seven degrees west, seven and two-fifth perches; north eighty-one degrees west, nine perches; south seventy-eight and one-half degrees west, six perches; north fifty-four and one-half degrees west, five and three-fifth perches; south eighteen degrees west, four and one-eighth perches; south sixty-six and one half degrees west, five perches; north seventy-two degrees west, four and two-fifth perches; west four and four-fifth perches; south sixty-four and one-half degrees west, four perches; north thirty-nine and three-quarter degrees west, eight perches; south sixty-seven degrees west, three and one-half perches; north sixty-eight degrees west, five perches; north five degrees west, three and two-fifth perches; north sixty-six degrees west, three and three-fifth perches; south sixty-six and one-half degrees west, seven and three-fifth perches; north fifty-six degrees west, ten perches; south sixty-five and one-quarter degrees west, five and one-fifth perches; south fifty-five degrees west, four and one-quarter perches; south eight and one-half degrees west, three perches; south twenty degrees west, four and two-third perches; south eighty and three-quarter degrees west, three perches; south sixty-four and three quarter degrees west, four perches; south fifty-nine and one-half degrees west, seven and one-half perches; north sixty-six degrees west, five perches; south thirty-nine degrees west, three and four-fifth perches; north forty-seven degrees west, twenty-three perches; south sixty-seven and three-quarter degrees west, nine perches; south thirty-seven and *and* three-quarter

degrees west, seven perches; south thirty-six and one-half degrees east, five and two-fifth perches; south four degrees east, six perches; south nineteen and one-half degrees west, five perches; south fifty-seven and three quarter degrees west, six and three-fifth perches; south thirty-eight degrees west, seven perches; south fifty-three and one-quarter degrees west, eight perches; south three degrees west, four perches; then leaving the branch and running south eighty-one degrees east, two and three-fifth perches, to a small ash tree, it being the beginning of a six and one-eighth acre lot sold out of "Black Walnut Thicket" by Walter and Oswald Brooke to Thomas Contee, now owned by William Connick; then running from the said ash by the bounds and distances of said lot south sixty-six degrees east, eight perches; south thirty-four and one-half degrees east, seven perches; south eight and one-quarter degrees west, thirty-four perches, to a stone near a poplar; south thirty-six and one-quarter degrees east, ten perches; south sixty two and one-quarter degrees west, twelve perches; north thirty-three and one-quarter degrees west, four perches; north forty-two degrees west, twenty-four perches; north fifty and one quarter degrees west, seven perches; north forty-six and three-quarter degrees east, eleven and three-quarter perches, to a stake on the north side of Deep Creek; north seventy-nine and one-half degrees west, fourteen and three-fifth perches, running up the branch west, ten perches; north fifty-seven degrees west, four and three-quarter perches; south sixty and one-half degrees west, five perches; south sixty-two and one-half degrees east, eight perches, to a stone; south thirty-six and three quarter degrees west, one hundred and seven perches, to a stone, it being the line dividing the lands of the said Carroll from George N. Walls; south nineteen and one-half degrees east, twelve perches, to a large red oak; south thirty-two and one-half degrees east, sixteen perches, to an old poplar, it being the second *bodry* of "Black Walnut Thicket," and first of Content; south thirty-four degrees west, thirty perches, to a dogwood stake in the woods; south thirty-two and one-half degrees east, two hundred and thirty-three perches, to a red oak, it being the dividing line of M. B. Carroll and Clement Hill; south eighty and one-quarter degrees east, one hundred and sixty perches, to a black oak standing on an ivy hill; thence north six and one-quarter degrees east, two hundred and sixty-six perches, to the beginning, containing, and now laid out for, six hundred and eighteen acres and one-half of land, more or less, together with all and singular the buildings, improvements, ways, waters, water courses, rights, members, privileges, advantages, and appurtenances thereto belonging, or in any wise appertaining, and all the estate, right, title, and interest, trust, property, claim, and demand whatsoever, at law and in equity, of them, the said Walter B. Brooke, Alexander Middleton and Elizabeth A. Middleton, his wife, of, in, and to the same: To have and to hold the said herein described premises, with the appurtenances thereunto belonging, unto the said Michael B. Carroll, his heirs and assigns, to the only proper use of the said Michael B. Carroll, his heirs and assigns forever.

In testimony whereof the said Walter B. Brooke, Alexander Middleton and Elizabeth A. Middleton, his wife, have hereunto set their hands and seals on the day and year first above written.

WALTER B. BROOKE, [SEAL.]
ALEXANDER MIDDLETON, [SEAL.]
ELIZABETH A. MIDDLETON. [SEAL.]

Signed, sealed, and delivered in presence of—
THOS. HOLLAND,
THOS. M. D. BADEN,
As to the first signed.
JOHN F. GARDINER,
JAS. H. A. MIDDLETON.

NOTTINGHAM, , 1842.

Received from Michael B. Carroll the sum of fifteen thousand dollars, being the consideration expressed to be paid in the foregoing indenture.

WALTER B. BROOKE,
ALEXANDER MIDDLETON,
ELIZABETH A. MIDDLETON.

STATE OF MARYLAND,
Prince George's county, sct.

Be it remembered, and it is hereby certified, that on this twenty-ninth day of January, one thousand eight hundred and forty-two, before the subscribers, two justices of the peace of the State of Maryland, in and for the county aforesaid, personally appears Walter B. Brooke, he being known to us to be the person who is named and described as, and professing to be, a party to the foregoing deed or indenture, and doth acknowledge the said indenture or instrument of writing to be his act and deed.

In testimony whereof we have hereunto subscribed our names, on the day and year aforesaid.

THOS. HOLLAND,
THOS. M. D. BADEN.

STATE OF MARYLAND,
Charles county, sct.

Be it remembered, and it is hereby certified, that on this twenty-first day of February, in the year of our Lord one thousand eight hundred and forty-two, before the subscribers, two justices of the peace of the State of Maryland, in and for the county aforesaid, personally appears Alexander Middleton and Elizabeth A. Middleton, his wife, they being known to us to be the persons who are named and described as, and professing to be, the parties to the foregoing deed or indenture, and do severally acknowledge the said indenture or instrument of writing to be their respective act and deed. And the said Elizabeth A. Middleton having signed and sealed said indenture before us, out of the presence and hearing of her husband, and the [said] Elizabeth A. Middleton

being by us examined, out of the presence and hearing of her said husband, whether she doth execute and acknowledge the same freely and voluntarily, and without being induced to do so by fear or threats of, or ill usage of, her husband, or by fear of his displeasure, "declareth and saith that she doth."

In testimony whereof we hereunto subscribe our names on the day and year aforesaid.

JOHN F. GARDINER,
JAS. H. A. MIDDLETON.

STATE OF MARYLAND,
Charles county, sct.

I hereby certify, that John F. Gardiner and James H. A. Middleton, gentlemen, before whom the above acknowledgment *were* made, and whose names are thereto subscribed, were, at the time of so doing, two of the State of Maryland justices of the peace, in and for Charles county aforesaid, duly commissioned and sworn.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of Charles county court, this twenty-second [SEAL.] day of February, in the year of our Lord one thousand eight hundred and forty-two.

JOHN BARKES,
Clerk, Charles county court.

STATE OF MARYLAND,
Prince George's county, sct.

I hereby certify, that the foregoing deed or instrument of writing is truly taken and copied from liber J. J. B. No. 2, folios 206, 207, 208, and 209, one of the land record books of Prince George's county.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court for Prince George's county, this 7th [SEAL.] day of January, anno domini 1852.

OWEN NORFOLK, *Clerk.*

Judgment.

Therefore, it is considered by the court here, that the said lessee as aforesaid do recover against the said Jane M. Carroll his term aforesaid yet to come and unexpired, of and in the said tracts of land called "Black Walnut Thicket" and "Content," with the appurtenances in the district aforesaid, wherein the said Jane M. Carroll is, by the jurors above, found to be guilty of the trespass and ejectment aforesaid; and the sum of one dollars his damages by the said jurors in manner aforesaid assessed; and also the sum of by the court now here adjudged unto the said lessee for his costs and charges by him about his suit in this behalf expended, and that he have thereof his execution, &c.

And be the said lessee amerced for his false complaint against the said Jane M. Carroll, for the residue of trespass and ejectment afore-

said, whereof the said Jane M. Carroll is above acquitted by the said jurors in form aforesaid, and the said Jane M. Carroll go thereof without day, &c. And hereupon the said lessee as aforesaid prays the writ of the United States of America, of habere facias possessionem, &c., &c., and to him it is granted, returnable here, &c.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here the said Jane M. Carroll, by her attorneys aforesaid, tendered to the court here the following bills of exception, and which were by the court here signed and sealed, and which are in form following, to wit:

Defendant's first bill of exceptions.

Action of ejectment in the circuit court of the United States, in and for the fourth circuit, and district of Maryland.

LESSEE OF GEORGE W. CARROLL and others, vs. JANE M. CARROLL.

November term, 1852.

At a trial of this cause the plaintiffs, to maintain the issue on their part joined, offered in evidence to the jury the following patent:

Patent Black Walnut Thicket.

Richard Marsham, patent 300 acres.

Charles, absolute lord and proprietary of the province of Maryland and Avalon, lord baron of Baltimore, to all persons to whom these presents shall come, greeting in our Lord God everlasting:

Know ye, that whereas William Mears, of our said province of Maryland, gentleman, having due unto him within this, our said province, two hundred and fifty acres of land for transporting himself and Elizabeth, his wife, Ann Isaacks, and Francis Hill, and Henry Harrison, into this province to inhabit, in the year one thousand six hundred sixty and five, as also fifty acres more by assignment from Edward Isaacs for his transportation into this province, to inhabit, the same year as appears upon record, did assign all his right, title, and interest of, in, and to three hundred acres of land due to him as aforesaid, unto George Lingam of Calvert county, the moiety whereof being also by the said Lingam assigned over unto Richard Marsham, of Calvert county aforesaid, there was surveyed and laid out, for and in the name of the said George Lingam and Richard Marsham, a tract of land in the said county of Calvert, called Black Walnut Thicket, for three hundred acres, more or less, and certificate whereof returned into our secretary's office, at

our city of St. Mary's, bearing date the sixteenth day of May, anno domini one thousand six hundred and seventy; and whereas the said George Lingam hath since, by writing under his hand and seal, bearing date the fourteenth day of December last past, bargained, sold, assigned, and set over, unto the said Richard Marsham, all his right, title, and interest, of, in, and to the said three hundred acres of land, or any part or parcel thereof, as also appears upon record. We do therefore hereby grant unto him, the said Richard Marsham, all that tract or parcel of land called Black Walnut Thicket, lying in Calvert county, and beginning at a marked poplar standing on the west side of the Patuxent river, in the woods, near the south main branch of a creek called Deep creek, and from the said popular running south-southeast, for one hundred and forty-four perches, to a bounded poplar in a small branch issuing out of the main branch aforesaid, bounded by the said branch, and running east southeast eighty perches, to an oak marked with four notches in the said branch; and from thence, by a line drawn east and by north, for one hundred and sixty perches, to a bounded white oak standing [in] a small branch which issueth out of the main branch aforesaid, bounded on the east by the said small branch, for one hundred and forty-eight perches, to a bounded poplar at the mouth of the said small branch in the said south main branch aforesaid, and with the said main branch, to the first bounded tree, containing and now laid out for three hundred acres, more or less, together with all the rights, profits, benefits, and privileges thereunto belonging, royal mines excepted. To have and to hold the same unto the said Richard Marsham, his heirs and assigns forever; to be holden of us, and our heirs, as of our manor of Patuxent, in free and common soccage, by fealty only for all manner of service yielding, and paying therefor yearly unto us and our heirs, at our receipt at our city of St. Mary's, at the most usual feasts in the year, viz: at the feast of the annunciation of the blessed Virgin Mary, and at the feast of St. Michael, the archangel, by even and equal portions, the rent of six shillings sterling, in silver and gold. And for a fine upon every alienation of the said land, or any part or parcel thereof, of one whole year's rent in silver and gold, or the full value thereof in such commodities, as we or our heirs, or such officer or officers appointed by us or our heirs, from time to time, to collect and receive the same, shall accept in discharge thereof, at the choice of us and our heirs, or such officer or officers as aforesaid. Provided, that if the said sum for a fine for alienation shall not be paid unto us or our heirs, or such officer or officers as aforesaid, and such alienation entered upon the record either in the provincial court, or in the county court where the said parcel of land lyeth, within one month next after such alienation, the said alienation shall be void and of none effect. Given at our city of St. Mary's, under the great seal of our said province of Maryland, the seven and twentieth day of September, in the fifth year of our dominion, &c., anno domini one thousand six hundred and eighty. Witness ourself.

LAND OFFICE OF MARYLAND.

I hereby certify, that the aforegoing is truly copied from liber C. B., No. 2, folioes 56 and 57, one of the land record books of this [SEAL.] office. Witness my hand and the seal of the land office of Maryland, this 27th day of November, 1852.

J. MURRAY,
Com. of the land office.

And also offered in evidence the following patent:

Patent for Content.

Edward Birch, patent 14, as "Content." Frederick, &c.

Know ye, that whereas Edward Birch, of Prince George's county, by his humble petition to our agents for management of land affairs within this province, did set forth that there was about the quantity of fifteen acres of vacant land lying and being in the county aforesaid, joining a tract of land belonging to the petitioner, called Dickinson's Park, partly cultivated, by means whereof the petitioner conceived the same could not be taken up by a common warrant, therefore humbly prayed a special warrant to effect and secure it; and that on return of a certificate of survey thereof, he complying with all other requisites, might have our grant issue unto him thereon, which is granted him, and accordingly a warrant, on the twenty-sixth day of February, seventeen hundred and fifty, unto him for that purpose did issue; in pursuance whereof it is certified unto our land office that there is surveyed and laid out, for and in the name of him, the said Edward Birch, no more than the quantity of fourteen acres of vacant land, for which rights were made good at the time of granting the said warrant; and he has paid and satisfied unto Benjamin Tacker, esq., our present agent and receiver general, for our use, the sum of one shilling sterling for the improvements mentioned to be made on the said land, according to Charles, lord baron of Baltimore, our great grandfather, of noble memory, his instructions to Charles Carroll, esq., his then agent, bearing date at London, the twelfth day of September, seventeen hundred and twelve, and registered in our secretary's office of our said province, together with a paragraph of our instructions bearing date at London, the fifteenth day of December, seventeen hundred and thirty-eight, and registered in our land office: We do therefore hereby grant unto him, the said Edward Birch, all that tract of land called "Content," beginning at the end of the fourth line of a tract of land called Hudson and Birch's race, being the north by west sixty eight perches line of said land, and running thence north seventy-nine degrees east, eight perches; north by west, twenty-two perches, north, fifty-seven degrees, west, fourteen perches, south twelve degrees west, forty-two perches; southwest, fifty-six perches, north sixty-seven degrees west, forty-eight perches, south seventy-seven perches, north seventeen degrees east,

forty-nine perches, east by north, thirty-nine perches; then with a straight line to the beginning, containing and now laid out for fourteen acres of land, more or less, according to the certificate of survey thereof taken out and returned into our land office, bearing date the twentieth day of June, seventeen hundred and fifty-one, and there remaining, together with all rights, profits, benefits, and privileges thereunto belonging, royal mines excepted. To have and to hold the same unto him, the said Edward Birch, his heirs and assigns forever, to be holden of us and our heirs as of our manor of Calverton, in free and common soccage, by fealty only for all manner of services, yielding and paying therefor, yearly, unto us and our heirs, at our receipt, at our city of St. Mary's, at the two most usual feasts in the year, viz., the feasts of the anunciation of the blessed Virgin Mary and Saint Michael, the archangel, by even and equal portions, the rent of seven pence sterling in silver or gold, and for a fine upon every alienation of the said land, or any part or parcel thereof, one whole year's rent in silver or gold, or the full value thereof, in such commodities as we and our heirs, or such officer or officers as shall be appointed by us and our heirs, from time to time, to collect and receive the same shall accept in discharge thereof, at the choice of us and our heirs, or such officer or officers aforesaid: Provided, that if the said sum for a fine for alienation shall not be paid unto us and our heirs, or such officer or officers aforesaid, before such alienation, and the said alienation entered upon record, either in the provincial court or county court where the same parcel of land lieth, within one month next after such alienation, then the said alienation shall be void and of no effect.

Given under our great seal of our said province of Maryland, this tenth day of August, anno domini seventeen hundred and fifty three

Witness our trusty and well beloved Horatio Sharpe, esq., lieutenant general and chief governor of our said province of Maryland, chancellor and keeper of the great seal thereof.

[THE GREAT SEAL.] HORATIO SHARPE.

LAND OFFICE OF MARYLAND.

I hereby certify, that the foregoing is truly copied from liber Y. S., No. 8, folios 341, 342, 343, one of the land record books of this office.

[SEAL.] Witness my hand and the seal of the land office of Maryland, this 27th of November, 1852.

J. MURRAY,
Commissioner of the land office.

They also offered in evidence the following deed:

Deed from W. B. Brooks and others to M. B. Carroll.

This indenture, made this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and forty-two, between Walter B. Brooks, of Prince George's county, in the State of Maryland,

and Alexander Middleton and Elizabeth A. Middleton, his wife, of Charles county, in the said State of Maryland, of the one part, and Michael B. Carroll, of Prince George's county, and State aforesaid, of the other part, witnesseth: That for and in consideration of the sum of fifteen thousand dollars, current money, by the said Michael B. Carroll to the said Walter B. Brooks, and Alexander Middleton and Elizabeth A. Middleton, in hand paid at and before the sealing and delivery of these presents, the receipt of which they doth hereby acknowledge, the said Walter B. Brooks, and Alexander Middleton and Elizabeth A. Middleton, his wife, hath bargained and sold, aliened and enfeoffed, and by these presents doth give, grant, bargain and sell, alien, enfeoff, release, convey, and confirm, unto the said Michael B. Carroll, his heirs and assigns, all these tracts, parts of tracts, or parcels of land, lying and being in Prince George's county aforesaid, called "Black Walnut Thicket," and "Content," contiguous to each other, and contained within the following metes and bounds, courses, and distances, to wit: Beginning at a stone standing near a small branch, and also near two locusts, it being the fourth boundary of the aforesaid tract of land called "Black Walnut Thicket," and running down the said branch, dividing the lands of the said Carroll and Joseph A. Turner, by the following courses and distances, to wit: North six and one quarter degrees east, five perches north; thirty-two degrees east, twelve and one-half perches; north fifty-one degrees east, nine and one-fifth perches; north thirty-one degrees east, eight and three-quarter perches; north fifty-five and three quarter degrees east, eight perches; north twenty-four degrees east, sixteen and two-fifth perches; north three and one-quarter degrees east, fifteen perches; north thirty-two degrees west, seven and two-fifth perches; north four degrees west, six and one-third perches; north twenty-one and one-half degrees west, six perches; north forty-one degrees west, nineteen and three-quarter perches; north seventy-two and one-quarter degrees west, seven and two-fifth perches; north twenty-seven and one-half degrees east, eight and one-third perches; north eighteen and one-half degrees east, seven perches; north five degrees east, nine perches; north fifty-one degrees west, six and one-half perches; north two degrees east, twelve perches; north, twenty-one degrees west, seven perches, to the main branch of Deep creek; then up with said branch as follows: South forty-one and one-half degrees west, eight perches; south sixty-three and one-half degrees west, four perches; north fifty-eight degrees west, four perches; north twenty and one-half degrees west, seven perches; south eighty-three and one-quarter degrees west, five and one-quarter perches; south thirty-seven degrees west, eleven and three-quarter perches; north forty-six and one-half degrees west, five perches; south eighty-five degrees west, four and three-quarter perches; north fifty-four degrees west, seven and one-quarter perches; north thirty-five degrees west, four and three-fifth perches; south eighty-five degrees west, three perches; north twenty-eight degrees west, four and one-fifth perches; north thirty-two and one-quarter degrees west, five and one-eighth perches;

north twelve degrees west, seven and one-third perches; south sixty-six degrees west, five and four-fifth perches north; eighty-seven degrees west, seven and two-fifth perches north; eighty-one degrees west, nine perches; south seventy-eight and one-half degrees west, six perches; north fifty-four and one-half degrees west, five and three-fifth perches; south eighteen degrees west, four and one-eighth perches; south sixty-six and one-half degrees west, five perches; north seventy-two degrees west, four and two-fifth perches; west four and four-fifth perches; south sixty-four and one-half degrees west, four perches; north thirty-nine and three-quarter degrees west, eight perches; south sixty-seven degrees west, three and one-half perches; north sixty-eight degrees west, five perches; north five degrees west, three and two-fifth perches; south sixty-six degrees west, three and three fifth perches; south sixty-six and one-half degrees west, seven and three-fifth perches; north fifty-six degrees west, ten perches; south sixty-five and one-quarter degrees west, five and one-fifth perches; south fifty-five degrees west, four and one-quarter perches; south eight and one half degrees west, three perches; south twenty degrees west, four and two-third perches; south thirty-nine and one-half degrees west, four and three-quarter perches; south eighty and three-quarter degrees west, three perches; south sixty-four and three-quarter degrees west, four perches; south fifty-nine and one-half degrees west, seven and one-half perches; north sixty-six degrees west, five perches; south thirty-nine degrees west, three and four-fifth perches; north forty-seven degrees west, twenty-three perches; south sixty-seven and three-quarter degrees west, nine perches; south thirty-seven and three-quarter degrees west, seven perches; south thirty-six and one-half degrees east, five and two-fifth perches; south four degrees east, six perches; south nineteen and one-half degrees west, five perches; south fifty-seven and three-quarter degrees west, six and three-fifth perches; south thirty-eight degrees west, seven perches; south fifty-three and one-quarter degrees west, eight perches; south three degrees west, four perches; then leaving the branch, and running south, eighty-one degrees east, two and three-fifth perches to a small ash tree, it being the beginning of a six and one-eighth acre lot sold out of "Black Walnut Thickett," by Walter and Oswald Brooks, to Thomas Contee, now owned by William Connick; then running from the said ash, by the courses and distances of said lot; south sixty-six degrees east, eight perches south, thirty-four and one-half degrees east, seven perches; south eight and one-quarter degrees west, thirty-four perches, to a stake near a poplar; south thirty-six and one-quarter degrees east, ten perches; south sixty-two and one-quarter degrees west, twelve perches; north thirty-three and one-quarter degrees west, four perches; north forty-two degrees west, twenty-four perches; north fifty and one-quarter degrees west, seven perches; north forty-six and three quarter degrees east, eleven and three-quarter perches, to a stake on the north side of Deep creek; north seventy-nine and one-half degrees west, fourteen and three-fifth perches, running up the branch west, ten perches; north fifty-seven degrees west, four and three-quarter perches; south sixty

and one-half degrees west, five perches; south sixty-two and one-half degrees east, eight perches, to a stone; south thirty-six and three-quarter degrees west, one hundred and seven perches, to a stone, it being the line dividing the lands of the said Carroll from George N. Walls; south nineteen and one-half degrees east, twelve perches, to a large red oak; south thirty-two and one half degrees east, sixteen perches, to an old poplar, it being the second boundary of "Black Walnut Thickett," and first of Content; south thirty-four degrees west, thirty perches, to a dogwood stake in the woods; south thirty-two and one-half degrees east, two hundred and thirty-three perches, to a red oak, to being the dividing line of M. B. Carroll and Clement Hill; south eighty and one-quarter degrees east, one hundred and sixty perches, to a black oak standing on an ivy hill; thence north six and one-quarter degrees east, two hundred and sixty-six perches, to the beginning, containing and now laid out for six hundred and eighteen acres and one-half of land, more or less;" together with all and singular the buildings, improvements, ways, waters, water courses, rights, members, privileges, advantages, and appurtenances thereto belonging, or in any wise appertaining, and all the estate, right, title, and interest, trusts, property, claim, and demand whatsoever, at law and in equity, of them, the said Walter B. Brooke, Alexander Middleton, and Elizabeth A. Middleton, his wife, of, in, and to the same; to have and to hold the said herein described premises, with the appurtenances thereunto belonging, unto the said Michael B. Carroll, his heirs and assigns, to the only proper use of the said Michael B. Carroll, his heirs and assigns, forever.

In testimony whereof the said Walter B. Brooke, Alexander Middleton and Elizabeth A. Middleton, his wife, have hereunto set their hands and seals, on the day and year first above written.

WALTER B. BROOKE, [L. S.]
ALEXANDER MIDDLETON, [L. S.]
ELIZABETH A. MIDDLETON. [L. S.]

Signed, sealed, and delivered, in the presence of—
THOS. HOLLAND,
THOS. M. D. BADEN, } As to the first signed.
JOHN F. GARDINER,
JAS. H. A. MIDDLETON.

NOTTINGHAM, 1842.

Received from Michael B. Carroll the sum of fifteen thousand dollars, being the consideration expressed to be paid in the foregoing indenture.

WALTER B. BROOKE,
ALEXANDER MIDDLETON,
ELIZABETH A. MIDDLETON.

STATE OF MARYLAND,
Prince George's county, sct.

Be it remembered, and it is hereby certified, that, on this twenty-

ninth day of January, one thousand eight hundred and forty-two, before the subscribers, two justices of the peace of the State of Maryland, in and for the county aforesaid, personally appears Walter B. Brooke, he being known to us to be the person who is named and described as, and professing to be, a party to the foregoing deed or indenture, and doth acknowledge the said indenture or instrument of writing to be his act and deed.

In testimony whereof we hereunto subscribe our names, on the day and year aforesaid.

THOS. HOLLAND,
THOS. M. D. BADEN.

STATE OF MARYLAND,
Charles county, sct.

Be it remembered, and it is hereby certified, that, on this twenty-first day of February, in the year of our Lord one thousand eight hundred and forty-two, before the subscribers, two justices of the peace of the State of Maryland, in and for the county aforesaid, personally appears Alexander Middleton and Elizabeth A. Middleton, his wife, they being known to us to be the persons who are named and described as, and professing to be, the parties to the foregoing deed or indenture, and do severally acknowledge the said indenture or instrument of writing to be their respective act and deed; the said Elizabeth A. Middleton having signed and sealed said indenture before us, out of the presence and hearing of her husband; and the said Elizabeth A. Middleton being by us examined out of the presence and hearing of her said husband, whether she doth execute and acknowledge the same freely and voluntarily, and without being induced to do so by fear or threats of *or* ill usage of her husband, or by fear of his displeasure, declareth and saith that she doth.

In testimony whereof we hereunto subscribe our names, on the day and year aforesaid.

JOHN F. GARDINER,
JAS. H. A. MIDDLETON.

STATE OF MARYLAND,
Charles county, sct.

I hereby certify, that John F. Gardiner and James H. A. Middleton, gentlemen, before whom the above acknowledgment *were* made, and whose names are subscribed thereto, were at the time of so doing two of the justices of the peace of the State of Maryland, in and for Charles county aforesaid, duly commissioned and sworn.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of Charles county court, this twenty-second
[L. S.] day of February, in the year of our Lord one thousand eight hundred and forty-two.

JOHN BARKES,
Clerk of Charles county court.

STATE OF MARYLAND,
Prince George's county, sct.

I hereby certify, that the foregoing deed or instrument of writing is truly taken and copied from liber I. I. B., No. 2, folios 206, 207, 208, and 209, one of the land record books of Prince George's county.

In testimony whereof I have hereunto set my hand, and affixed the [L. S.] seal of the circuit court for Prince George's county, this 7th day of January, anno Domini 1852.

OWEN NORFOLK, *Clerk.*

Evidence of G. W. Biscoe.

The plaintiffs also gave in evidence, by George W. Biscoe, a competent witness, that he knew the late Michael B. Carroll, of Prince George's county, in the State of Maryland, and that he departed this life on the 30th day of August, 1851; and that he died without children or descendants of children, and that he left the defendant, Jane M. Carroll, his widow, and left the following persons his next of kin and heirs at law, that is to say, Araminta Brooke, the wife of John B. Brooke, of Prince George's county aforesaid, his only sister; that he had a brother named Charles Carroll, who died in the lifetime of the said Michael B. Carroll, leaving the following named children his representatives and heirs at law, to wit: America, the wife of John M. Martin, Mary, the wife of John Ford, Robert D. Carroll, and Charles W. Carroll; and that the said Michael B. Carroll left, at the time of his death, the two following named persons, his only surviving brothers, that is to say, George W. Carroll and De Rosz Carroll.

The plaintiffs also proved by said witness, that he knows that said Michael B. Carroll, in his lifetime, purchased from Walter B. Brooke a farm known as Black Walnut Thicket and Content, lying in Prince George's county aforesaid, but he is unable to say at what precise date the said purchase was made. The said witness further proved, that he knows that said Walter B. Brooke was in possession of said farm from the time of the decease of his mother, and that she died from ten to fifteen years since; that he knows nothing of any antecedent possession of said farm.

Evidence of Jno. B. Brooke.

The plaintiff then proved by John B. Brooke, a competent witness, that he knew said Walter B. Brooke, and he thinks he was in full possession of a farm usually called Black Walnut Thicket and Content, which he sold to Michael B. Carroll, and that he was in possession thereof as long back as twenty years; that said farm formerly belonged to Dr. Oswald Brooke, the father of the said Walter B. Brooke, and after the death of Doctor Oswald Brooke it was occupied by Mrs. Brooke, the widow of said Dr. Oswald Brooke, and by said Walter B. Brooke, until said Walter B. Brooke acquired full possession; and that the possession of said Dr. Oswald Brooke was uninterrupted, during

his lifetime, from 1809 till his death; and that the possession of said Walter B. Brooke and those under whom he claimed had been continuous from the year 1809 to the day he sold to said Michael B. Carroll, as above stated. That said Michael B. Carroll died in possession of said land so as aforesaid, sold to him by said Walter B. Brooke, and that he so occupied the same uninterruptedly from the time it was so sold, cultivating the same as his own; and that the said defendant, his wife, has been in possession of the same ever since his death. The plaintiffs here rested their case.

The defendant, by her counsel, then prayed the court to instruct the jury that there was no sufficient evidence in the cause, from which the jury could properly find that the land embraced in said deed, from said Walter B. Brooke, and others, to said Michael B. Carroll, offered in evidence by the plaintiffs, is the same land, or parcel of the same lands, embraced in the said patents or in either of said patents. But the court refused said prayer, being of opinion that there was evidence in the cause proper to be left to the jury to determine whether the said land, mentioned in the deed, was the same, or part of the same, granted by the said patents. To which opinion of the court, and to the refusal of said court to grant the aforesaid prayer of the said defendant, the said defendant, by her counsel, prayed leave to except, and that the court would sign and seal this first bill of exceptions, according to the form of the statute in such case made and provided; and which is accordingly done this fourth day of December, 1852.

R. B. TANEY, [SEAL.]
JOHN GLENN. [SEAL.]

Defendant's second exception.

After the plaintiff had given the evidence set forth in the first bill of exceptions, and which it is agreed shall be taken and considered as a part of the bill of exceptions, the defendant, to maintain the issue on her part joined, offered in evidence the testament and last will of the said Michael B. Carroll, and the probate thereof, as follows:

M. B. Carroll's will.

The last will and testament of Michael B. Carroll, of Prince George's county, in the State of Maryland:

I, Michael B. Carroll, being at this time in a weak state of bodily health, but of sound and disposing mind, memory, and understanding, do make and publish this my last will and testament, in manner following, that is to say:

First and principally, I commit my soul into the hands of Almighty God, and my body to the earth, to be decently buried at the discretion of my executrix hereinafter named, and after the payment of my just debts and funeral expenses, I give, devise, and bequeath as follows:

Item. To my dear wife Jane, I give and bequeath all my slaves, and do request that none of them may be sold or disposed of for the

payment of my debts, but that provision shall be made for discharging the same out of the other personal property and effects which I shall leave at the time of my death.

Item. I give and bequeath to my said wife all the moneys that may be due me on account of the copartnership business heretofore conducted between Thomas Holland and myself, and also the moneys that may be due to me individually on account of the mercantile business subsequently conducted by myself, and also the amount that the said Thomas Holland may owe me for board.

Item. To my three nephews, Wm. Pinkney Brooke, George C. Brooke, and John B. Brooke, I give and bequeath one black colt each, and to each of my said nephews also a pecuniary legacy of five hundred dollars apiece.

Item. I do direct my executrix hereinafter named to pay to my brother in law, John B. Brooke, the amount of moneys which I borrowed from my late sister, Sophia H. Carroll, with interest, and any moneys it may appear that I may owe him individually.

Item. All the rest and residue of my property, both real, personal, and mixed, I give, devise, and bequeath to my said wife Jane, who I do hereby constitute and appoint sole executrix of this my last will and testament, enjoining it upon her nevertheless to consult and advise with the said John B. Brooke, as occasion may require, respecting the settlement of estate, and make him a reasonable compensation for the same out of the funds herein before bequeathed to her; and I do hereby revoke and annul all former wills by me heretofore made, declaring this and none other to be my last will and testament.

In testimony whereof I have hereunto set my hand and seal, this 10th day of September, anno domini 1837.

MICHAEL B. his ⋈ mark. CARROLL. [SEAL.]

Signed, sealed, published, and declared by Michael B. Brooke, as and for his last will and testament, in presence of us, who in his presence and at his request, and in the presence of each other, have subscribed our names as witnesses hereto.

TURNER WOLTON,
HENRY BROOKE,
WM. A. QUINN.

PRINCE GEORGE'S COUNTY, *sct.*

September 12, 1851.

Then came William A. Quinn, one of the witnesses to the within will, and made oath on the holy evangely of Almighty God, that he did see Michael B. Carroll, the testator herein named, sign and seal this will, and hear him publish, pronounce, and declare the same to be his last will and testament; that at the time of his so doing, he was, to the best of his apprehension, of sound and disposing mind, memory,

and understanding, and that he, together with Turner Wolton and Henry Brooke, the other two subscribing witnesses, respectively subscribed their names to this will in the presence of the testator, at his request, and in the presence of each other.

Sworn before JAMES HARPER,
Register of wills for P. G. county.

I hereby certify, that the within and foregoing is a true copy of the last will and testament of Michael B. Carroll, late of Prince George's county, deceased, from the record now remaining in my office.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of the orphan's court, this 24th day of November, 1852.

Teste: WM. A. JARBOE,
Register of wills for P. G. county.

Court's instruction.

And thereupon, upon the prayer of the plaintiff, the court gave the following instruction to the jury:

If the jury find that the plaintiff, and those under whom he claims, have possessed and held the land called Black Walnut Thicket and Content, described in the deed from Walter B. Brooke and others, to Michael B. Carroll, dated 29, 1842, and that the said Michael B. Carroll died seized thereof August 30, 1851, and the lessors of the plaintiffs are his heirs at law, and that the said land is the same, or part of the same, land mentioned in the patents for Black Walnut Thicket and Content, offered in evidence by the plaintiffs, then the plaintiffs are entitled to recover the land mentioned in the said deed, and that the same did not pass to the defendant by the said will of Michael B. Carroll.

To the giving of which said instruction the defendant, by her counsel, prayed leave to except, and that the court would sign and seal this second bill of exceptions, according to the form of the statute in such case made and provided; and which is accordingly done this fourth day of December, 1852.

R. B. TANEY. [SEAL.]
JOHN GLENN. [SEAL.]

And now here at this day, to wit, the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and fifty-two, the said Jane M. Carroll produced to the said circuit court here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next; which said writ of error is in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, greeting:

[SEAL.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, between the lessee of Geo. W. Carroll, De Rosz Carroll, Charles W. Carroll, Robert D. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, plaintiff, and Jane M. Carroll, defendant, a manifest error hath happened, to the great damage of the said Jane M. Carroll, as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-one.

THO. SPICER,
Clerk, circuit court.

Issued 29th November, 1852.

In pursuance whereof, and according to the *from* and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, is hereby transmitted to the said Supreme Court accordingly.

Writ of error bond.

Know all men by these presents, that we, Jane M. Carroll, Sarah M. Worthington, and A. Turton, are held and firmly bound unto the lessee of George W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, John Ford and Mary, his wife, in the full and just sum of five hundred dollars, lawful money of the United States, to be paid to the said lessee of the said George W. Carroll, De Rosz Carroll, Robert D. Carroll, Carles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and

severally, firmly by these presents. Sealed with our seals, and dated this twentieth day of December, in the year of Lord one thousand eight hundred and fifty-two.

Whereas, at a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-two, in an action of trespass and ejectment, pending in the said circuit court, the said lessee of the said George W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, recovered his judgment against the said Jane M. Carroll for the tracts of land mentioned in the declaration, called Black Walnut Thicket and Content. And whereas the said Jane M. Carroll hath sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said lessee, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December, in the year eighteen hundred and fifty-two, to show cause, if any there be, why the judgment, so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Now, the condition of the above obligation is such, that if the said Jane M. Carroll shall well and truly prosecute with effect her said writ of error, and pay unto the said lessee, as aforesaid, his heirs, executors, administrators, or assigns, the costs and charges adjudged unto him in the said circuit court, as also all such damages, costs, and charges which may be award[ed] to him by the said Supreme Court, in case she shall fail to make good her said plea, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue.

JANE M. CARROLL, [SEAL.]
SARAH MATILDA WORTHINGTON, [SEAL.]
AFRINA TURTON. [SEAL.]

Signed, sealed, and delivered in presence of—
W. A. QUINN.

I hereby certify that the sureties to the within bond are good and sufficient, as witness my hand and seal this 20th December, 1852.

WM. A. QUINN, [SEAL.]
Justice of the peace for Prince George's county.

Approved. R. B. TANEY.

THE UNITED STATES OF AMERICA,

To the lessee of George W. Carroll, De Rosz Carroll, Robert D. Carroll, Charles W. Carroll, John M. Martin and America, his wife, and John Ford and Mary, his wife, greeting.

You are hereby cited and admonished to be and appear at a Supreme